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## EXPEDITIOUS CRIMINAL JUSTICE



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**Abstract:** Speedy trial is the essence of criminal justice and delay constitutes denial of it. While on one hand, reasonably expeditious trial is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21 of the Constitution of India. The public interest also demands that criminal justice should be swift and sure. The guilty should be punished while events are still fresh in public mind and that the innocent should be absolved as early as is consistent with a fair and impartial trial. Section 309 of the Code of Criminal Procedure (in short "the Code") mandates that in every trial the proceedings should be held as expeditiously as possible, and in particular when the examination of witnesses has once begun, the same should be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same by the following day to be necessary for reason to be recorded.

**Keywords:** service of summons, issue commission for examination, adjournment powers, manifestation of fair, just and reasonable, requisite sensitivity on the part of the judge

### INTRODUCTION

This paper reveals about 'speedy trial in criminal law' discussing relevant provisions of Cr.P.C. It comprises of four parts. Part 'A' deals with investigation, inquiry and trial of cases in context of speedy trial. Part 'B' elucidates right to bail in delay of trial. Part 'C' relates to expeditious proceedings for maintenance and Part 'D' discusses about delay in execution of death sentences.

#### Part 'A'

The Cr.P.C. contains certain provisions i.e. Sections 157-176, 258, 309, 311 and 468 to expedite the disposal of cases and to enable timely delivery of justice. This code provides a statutory time limit to complete an investigation. Section 154-176 deal with information to the police and their power to investigate, and Section 167 further provides that a failure to complete investigation within the statutory time frame shall lead to release of the accused in custody on bail. Further the Cr.P.C. Amendment Act, 2005, has enacted Section 436A, which stipulates that the maximum period for which under-trial prisoner can be detained, is half of the maximum period of imprisonment specified for that offence under that law (excluding offences for which the punishment of death has been specified as one of the punishments under that law). Since the absence or non-attendance of parties at various stages of investigation and trial contributes to the overall delay in justice delivery system, it is relevant to briefly highlight the provisions in the Cr.P.C. that address absence/non-attendance. These include Section 267 (express provision granting criminal courts the power to require attendance), Section 270 (officer in charge of prison shall cause the person requiring attendance under section 267 to be present in the court) and Section 271 (power to issue

commission for examination of witnesses in prison). Sections 284-287 empower the courts to summon witness or issue commissions for the examination of the witnesses. Section 61-69 provide for the service of summons, whereas Section 62(3) requires signature of receipt by person to whom the summons are served and Section 69(2) provides that summons have been duly served on witnesses refusing to take delivery of the summons.

The courts are of the opinion that they have no power to stop the investigation, for to do so would be to trench upon the lawful power of the police to investigate into cognizable offence. On the other hand, if the F.I.R. does not disclose the commission of cognizable offence, the court would be justified in quashing the investigation on the basis of the information as laid down or received. In the case of Chhote Lal Jain vs. State of Rajasthan, the Court observed that the legislative mandate/intent of speedy investigations and speedy trials is clearly demonstrated from the various provisions of the Cr.P.C. The speedy investigation and speedy trial is in consonance with the concept of fairness of trial as enshrined in Art.21 of the Constitution of India.

In England, there is C.P.S. system which decides whether a case should be tried or not by the competent court of jurisdiction. Hence most of the cases are disposed of at initial stage, whereas in India, there are complicated procedures as to F.I.R. and investigation of offences which are the main cause of delay.

In case of Imtiyaz Ahmad, the Allahabad High Court ordered staying the investigation on a F.I.R. registered in 2002. The petitioner argued that the investigation at advanced stage was hampered by the stay order. Also the order was against the statutory provisions of the Cr.P.C. as well as various pronouncements of the Supreme Court.

Hence the order was liable to be set aside so that investigation could be completed to unearth the truth. The Supreme Court directed the Registrar-General of all High Courts to furnish the list of orders passed by the courts concerned in exercise of Section 482 of Cr.P.C. staying investigation of complaints or further proceedings in criminal cases. In this case it was argued that the police could not proceed with the investigation due to large number of stay orders of all the High Courts under section 482 of Cr.P.C.

#### **Expeditious Inquiry and Trial**

Section 309 of the Cr.P.C. deals with the adjournment powers of the court to postpone the hearing. Under this Section every inquiry or trial, should be held 'expeditiously' and when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses have been examined.

Although, the Parliament amended Section 309 of the Cr.P.C. Provides that the inquiry or trial (as to Section 376 to 376D of I.P.C.) shall, as far as possible, be completed within a period of two months from the date of commencement of the examination of witness. It also provides that adjournment shall be granted except where the circumstances are beyond the control of the party, and engagement of pleader in another court shall not be ground for an adjournment, where witnesses is present in court, and whether the party is not present or even present but not ready to examine, the court may proceed and pass as such order, it thinks fit.

Unfortunately, the above amendment under section 309(2) which seems to address directly the problem of delay due to adjournment for non-attendance has yet not come into force because of protest by Bar..

In the case of Nimeon Sangma vs. Govt. of Meghalaya, the Supreme Court said that Section 167, 209 and 309 has emphasized on the importance of expeditious disposal of cases including investigations and trials.

In case of M/s Radio Corner vs. Allwyn Unit of Voltas Ltd., the Court observed that the purpose of Section 309 is that expeditious trial is the rule and adjournments are an exception. The Calcutta High Court, in case of Bhagbati Devi vs. Sunil Kumar observed that the language of Section 309 clearly discourages an adjournment 'sine die.'

The courts are of the opinion that the illness of defence counsel and absence of main prosecution witness may be grounds of adjournments.

#### **PART 'B'**

Provisions of bail during delay in conducting trial have been dealt with under this part. Delay in the conclusion of the trial cannot be attributed to the accused. The accused is entitled to be enlarged on bail.

Bail is well understood in criminal jurisprudence and Chapter XXXIII of the Cr.P.C. 1973 contains elaborate provisions relating to grant of bail. Bail is dealt with under Section 436 to 439 in Chapter XXXIII of Cr.P.C. Section 436 provides that in what cases bail is to be taken, while Section 437 deals with that when bail may be taken in case of non-bailable offence. Section 439 provides that the High Court and the Session Court have discretionary power to grant bail.

The Supreme Court of India has granted bail in a number of criminal proceedings due to inordinate delay in investigation, inquiry or trial. In case of Sunil Batra vs. Delhi Administration, the Apex Court held that the right to speedy trial includes the right to get bail under Art.21 of the Constitution of India.

In the case of Gudikanti Narasimhulu vs. P.P. High Court of A.P. Justice V.R. Krishna Iyer observed that 'Bail or Jail' – at the pre-trial or post conviction stage – belongs to the blurred area of the criminal justice system and largely hinges on the hunch of the bench, otherwise called judicial discretion. The code is cryptic on this topic and the court prefers to be tacit, be the order custodial or not. And yet personal liberty, deprived when bail is refused, is too precious a value of our constitutional system recognized under Art.21 of the Constitution of India.

In the case of Gulab Singh Barajara vs. State of Chhatisgarh, the court observed that where the accused is alleged to have committed offences under Sections 420, 467, 468, 471, 120 I.P.C. and the Magistrate had framed charges, trial was not concluded even after 60 days and the accused argued that in given circumstances he was entitled to be released under Section 437(b). Since the court was not regular one and having its link court at different places and due to heavy pendency of cases, the completion of trial was taken on day to day basis. Hence, order dismissing grant of bail, giving reasons for rejection, was proper.

Section 436A of Cr.P.C. discusses and deliberates the maximum period for detention of undertrials. Generally it provides that the under-trials should be released by the court on his personal bond with or without sureties, where he has undergone detention for a period of extending up to one-half of the maximum period of imprisonment specified for the offence except for punishment of death.

In the case of P. Ram Chandra Rao vs. State of Karnataka the Supreme Court observed that mental agony, expense and strain, which a person proceeded against in criminal law has to undergo and which coupled with delay may result in imparting the capability or ability of the accused to defend himself, have persuaded the constitutional courts of the country in holding the right to speedy trial a manifestation of fair, just and reasonable procedure enshrined in Art.21 of the Constitution of India.

#### **PART –C**

Certain provisions of Cr.P.C. provide for a speedy, effective and rather inexpensive remedy against persons who neglect or refuse to maintain their dependant wives, children and parents. Though subject matter of these provisions is civil in nature, the primary justification for their inclusion in the Cr.P.C. is that a remedy more speedy and economical than available in civil courts is provided for by these sections for the benefit of needy persons mentioned therein. By providing a simple, speedy but limited relief, the provisions seek to ensure that neglected wife, children and parents are not left beggared and destituted on the scrap heap of society and thereby driven to a life of vagrancy, immorality and crime for their subsistence.

In case of Nand Lal Misra v. K.L. Mishra, the Supreme Court observed that section 125 prescribes a self-

contained speedier procedure for compelling a man to maintain his wife, children and parents.

#### **PART – D**

Part 'D' is divided into two sub parts. Sub-Part-1 deals with execution, suspension, revision and commutation of sentences and the circumstances in which the appropriate government can suspend, remit, or commute the sentence imposed on the offender under Chapter XXXII of the Cr.P.C. while sub-part II discusses inordinate delay in disposing the mercy petition under Art.72 and 161 of the Constitution of India.

Sections 413-416 deal with the relevant provisions as to execution of death sentences which were passed under Section 368 of Cr.P.C. The court takes into consideration all the circumstances that appellant had been awaiting the execution of death sentence for over a year to alter the death sentence to life imprisonment.

The long pendency of mercy petitions, which are to be disposed of by the President and the Governor with the advice of the governments, is also causing delay in executing the death sentences. The Supreme court in its decision in the T.V. Vatheeswaran vs. State of Tamil Nadu ruled that prolonged delay in execution of death sentence exceeding two years will be a sufficient ground to quash death sentence since it is unjust, unfair and unreasonable procedure and only way to undo the wrong is to quash the death sentence.

But soon after, in the case of Sher Singh vs. State of Punjab, the Supreme Court overruled its earlier ruling in Vatheeswaran's case and observed no fixed period of delay could be held to make the sentence of death in-executable. The Court, however, observed that it would consider such delay as an important ground for commutation of the death sentence which was approved by the Supreme Court in Triveni Ben vs. State of Gujarat.

In the case of Madhu Mehta vs. Union of India, the Supreme Court held that a delay of eight years in disposal of mercy petition would be sufficient to justify the commutation of death sentence to life imprisonment since right to speedy trial is implicit in Art.21 of the Constitution which operated through all the stages of sentencing including mercy petition to the president.

While in case of Afzal Guru, whose mercy petition is pending since August, 4th 2005, no decision has been taken by the President of India till now.

#### **Government's Efforts:**

The Government of India assured to eradicate the barricade of rendering justice without inordinate delay. Law Minister Mr. Veerappa Moily said that his ministry was preparing 'Mission Document' to be used as 'road map' for judicial reforms with modern technology setting up 5,000 new courts. He noted that the infrastructure will remain the same but it will get the work of 15,000 courts to liquidate the 274 crore case, which are pending in trial courts clogging the wheels of justice and entailing litigant's endless wait for decision in his case. The Government of India has unveiled 'National Litigation Policy' (NLP) that would dictate how to reduce the burgeoning number of its court cases and act as 'an efficient and responsible' litigant. This policy ensures the

responsibility of the government to protect and respect the fundamental right of citizens, and it requires that lawyers should avoid seeking adjournments. Moreover it also encourages the arbitration and A.D.R. means to ensure quicker justice by the courts. Though certain efforts have been made in this regard, but no specific solution could be arrived at.

#### **CONCLUSION**

The aforesaid analysis generally focuses upon the major factors which are responsible for delayed justice in criminal cases. There may be some other factors also, including lack of effective management, and lack of infra structural support which can be remedied by imparting managerial skill and upgrading infra structure of the Court. Lack of requisite sensitivity on the part of the judge handling the case may also sometimes result in neglect of the case contributing to delay.

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